

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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VALLEY HEALTH SYSTEM LLC,

Plaintiff,

v.

TOTAL ELECTRICAL SERVICES &  
SUPPLY CO.; et al.,

Defendants.

2:10-CV-0949-LRH-LRL

ORDER

Before the court is plaintiff Valley Health System LLC's ("Valley Health") motion to strike affirmative defenses filed on July 16, 2010. Doc. #10.<sup>1</sup> Defendant Total Electrical Services & Supply Co. ("TESSCO") filed an opposition (Doc. #16) to which Valley Health replied (Doc. #22).

**I. Facts and Procedural History**

This is an action for breach of contract. Plaintiff Valley Health alleges that TESSCO and another defendant Caprock Healthplans, Inc. ("Caprock") failed to pay over ninety thousand dollars (\$90,000) in medical bills incurred by non-party Kathy Shirley ("Shirley"), a patient at Valley Health, who had medical insurance through TESSCO and Caprock governed by a contract known as the PPO Hospital Participation Agreement.

<sup>1</sup>Refers to the court's docket entry number.

1 On June 28, 2010, Valley Health filed the underlying complaint for breach of contract.  
2 Doc. #1, Exhibit 1. In response, TESSCO filed an answer alleging twenty-eight (28) affirmative  
3 defenses. Doc. #7. Thereafter, Valley Health filed the present motion to strike sixteen (16) of the  
4 twenty-eight (28) affirmative defenses. Doc. #10.

## 5 **II. Legal Standard**

6 A motion to strike an affirmative defense is brought pursuant to Federal Rule of Civil  
7 Procedure 12(f), under which a court may strike “from any pleading any insufficient defense or  
8 any redundant, immaterial, impertinent or scandalous material.” FED. R. CIV. P. 12(f). Affirmative  
9 defenses are governed by the same pleading standard as complaints. *Wyshak v. City Nat’l Bank*,  
10 607 F.2d 824, 827 (9<sup>th</sup> Cir. 1979) (“The key to determining the sufficiency of pleading an  
11 affirmative defense is whether it gives plaintiff fair notice of the defense.”).

12 A complaint must satisfy the Federal Rule of Civil Procedure 8(a)(2) notice pleading  
13 standard. *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1103 (9th Cir. 2008). That  
14 is, a complaint must contain “a short and plain statement of the claim showing that the pleader is  
15 entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Rule 8(a)(2) pleading standard does not require  
16 detailed factual allegations; however, a pleading that offers only “labels and conclusions” or “a  
17 formulaic recitation of the elements of a cause of action” will not suffice. *Ashcroft v. Iqbal*, 129 S.  
18 Ct. 1937, 1949 (2009) (*quoting Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

19 Furthermore, Rule 8(a)(2) requires a complaint to “contain sufficient factual matter,  
20 accepted as true, to state a claim to relief that is plausible on its face.” *Id.* at 1949. A claim has  
21 facial plausibility when the pleaded factual content allows the court to draw the reasonable  
22 inference, based on the court’s judicial experience and common sense, that the defendant is liable  
23 for the misconduct alleged. *See id.* at 1949-50.

## 24 **III. Discussion**

25 Valley Health seeks to strike sixteen (16) affirmative defenses from TESSCO’s answer:  
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1 thirteen (13) for failure to plead the affirmative defenses with sufficient particularity to establish  
2 fair notice of the defense and three (3) as a matter of law. Doc. #10. The court shall address each  
3 argument below.

4 **A. Pleading Insufficiency**

5 Valley Health seeks to strike TESSCO's Second, Third, Fourth, Fifth, Sixth, Seventh,  
6 Eighth, Tenth, Thirteenth, Sixteenth, Seventeenth, Twenty-third, and Twenty-fourth affirmative  
7 defenses for failure to plead the defenses with sufficient particularity.

8 The court has reviewed the documents and pleadings on file in this matter and finds that the  
9 TESSCO has not alleged sufficient facts to provide notice to Valley Health as to the nature of its  
10 affirmative defenses. In all of the affirmative defenses at issue TESSCO represents that Valley  
11 Health is barred from recovering for the alleged breach of contract because of the existence of the  
12 affirmative defense. But TESSCO does not point to the existence of some identifiable fact that  
13 would make the affirmative defense plausible on its face. Further, TESSCO fails to allege what  
14 behavior Valley Health engaged in that gave rise to the affirmative defenses and why these  
15 defenses are applicable in this matter. Instead, TESSCO simply lists various conclusory statements  
16 asserting the existence of an affirmative defense without stating a reason why that affirmative  
17 defense might exist. Therefore, the court shall strike these thirteen (13) affirmative defenses.

18 Because the court is striking the aforementioned affirmative defenses for failure to give  
19 sufficient notice of the nature of the defense, the court shall grant TESSCO leave to amend its  
20 answer. *See Wyshak*, 607 F.2d at 826 (holding that if an affirmative defense is stricken for failure  
21 to give sufficient notice, the court should grant the defendant leave to amend its answer).

22 **B. As a Matter of Law**

23 Valley Health further seeks to strike TESSCO's First, Ninth, and Twenty-second  
24 affirmative defense as a matter of law. TESSCO consents to the striking of its First and Twenty-  
25 second affirmative defenses. Therefore, the court shall strike these two defenses with prejudice.  
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1                   **1. Ninth Affirmative Defense**

2           TESSCO's Ninth affirmative defense provides that "Plaintiff's conduct relative to  
3 Defendant and the relationship between Plaintiff and Defendant were such as to bring Defendant  
4 into this lawsuit with unclean hands, and as such, Plaintiff is estopped from pursuing these  
5 claims." Doc. #7. To establish a defense of unclean hands, a party must show (1) egregious  
6 misconduct by one party, and (2) a serious harm caused to the other party by that conduct. *See Las*  
7 *Vegas Fetish and Fantasy v. Ahern Rental*, 182 P.3d 764, 767 (Nev. 2008).

8           In their motion, Valley Health argues that the defense of unclean hands is improper in this  
9 action because there are no allegations of egregious misconduct in TESSCO's answer. However,  
10 TESSCO's answer alleges that Valley Health's medical charges of Shirley are "unbundled,  
11 duplicative, not sufficiently documented, or involved overstated utilization for items charged"  
12 which constitutes egregious conduct. The court finds that this allegation is sufficient to allege  
13 egregious misconduct by Valley Health, and therefore the affirmative defense of unclean hands.  
14 Accordingly, the court shall deny Valley Health's motion to strike as to TESSCO's Ninth  
15 affirmative defense.

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1 IT IS THEREFORE ORDERED that plaintiffs' motion to strike affirmative defenses (Doc.  
2 #10) is GRANTED in-part and DENIED in-part. The clerk of court shall STRIKE defendant's  
3 Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, Thirteenth, Sixteenth, Seventeenth,  
4 Twenty-third, and Twenty-fourth affirmative defenses from defendant's answer (Doc. #7) without  
5 prejudice.

6 IT IS FURTHER ORDERED that the clerk of court shall STRIKE defendant's First and  
7 Twenty-second affirmative defenses from defendant's answer (Doc. #7) with prejudice.

8 IT IS FURTHER ORDERED that defendant is granted leave to file an amended answer  
9 within twenty (20) days from entry of this order.

10 IT IS SO ORDERED.

11 DATED this 29th day of October, 2010.



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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE